IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 2ND MARCH 2007 / 11TH PHALGUNA 1928

Crl.MC.No. 578 of 2007()

SC.270/2004 of ADDL.SESSIONS COURT (ADHOC)-III, THALASSERY

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PETITIONER:

M.K.PRADEEPAN, S/O.BALAN,
CHAMBAKULATHIL HOUSE
KATHIRUR AMSOM, PONNIAM DESOM,
KANNUR DT.

BY ADV. SRI.R.PARTHASARATHY
SRI.A.RADHAKRISHNAN NAIR

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 02/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 578 of 2007

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Dated this the 1st day of March, 2007

O R D E R

The petitioner is the 7th accused. He, along with the co-accused, faced allegations, inter alia, under Sections 3 and 5 of the Explosive Substances Act and under Section 324 r/w. 149 I.P.C. The co-accused stood trial. But the petitioner was not available for trial. After the trial, the co-accused were all acquitted. The petitioner has now come before this Court with the prayer that powers under Section 482 Cr.P.C. may be invoked to quash the proceedings against the petitioner.

2. What is the ground? The learned counsel for the petitioner submits that in the prosecution against the co-accused it has come out clearly that there is no evidence against the petitioner and there can be no evidence against him. The defacto complainant was not able to identify the accused persons, even though he did speak of an incident in which he suffered injuries. The other eye witnesses, i.e. PWs. 3, 4 and 6 did not support the prosecution case. In these circumstances the learned counsel for the petitioner submits that if the petitioner

were compelled to stand the ordeal of trial, it would be nothing but sheer wastage of time, effort and resources of the State. The same would unnecessarily result in vexation to the petitioner, it is urged.

3. A Full Bench of this Court had occasion to consider this situation in **Moosa** v. **S.I. of Police** (2006 (1) KLT 552). It has been held categorically in that decision that the mere fact that the co-accused have secured acquittal in a trial held against them is no reason for the absconding co-accused to claim any advantage from such acquittal. The complicity of the petitioner was not in issue in the earlier trial. In these circumstances, I am satisfied that there is no necessity for invocation of the powers under Section 482 Cr.P.C.

4. The learned counsel for the petitioner submits that the petitioner is willing to surrender before the learned Magistrate. Warrant of arrest is chasing him. He could not enter appearance on account of reasons beyond his control.

5. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the

application for bail on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

3. This Crl.M.C. is accordingly dismissed, but subject to the above observations/directions. I may hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself, unless there are compelling reasons.

(R. BASANT)
Judge

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